IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1657 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO No

2. To be referred to the Reporter or not? Yes :

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO No

5. Whether it is to be circulated to the Civil Judge? No :

HEIRS OF CHHOTALAL MAGANLAL

Versus

HEIRS OF LALUBHAI JAMNADS

Appearance:

Mr.Nilay Anjaria for Petitioners

MS KJ BRAHMBHATT for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 09/05/2000

C.A.V. JUDGEMENT

1. This is landlord's Revision under Section 29(2) of the Bombay Rent Act against concurrent judgments and Decrees of the trial Court as well as Lower Appellate Court dismissing the Suit of the revisionist landlord for

recovery of possession of the disputed portion from the respondents, but decreeing the Suit of the landlord for recovery of Rs.540/- and fixing the standard rent at Rs.15/- p.m.

2. The facts giving rise to this Revision are as under :

The ground floor portion in dispute owned by the plaintiffs was let out to the defendant No.1 on monthly rent of Rs.15/-. The Suit for eviction of the defendants was filed on several grounds alleging that the Suit accommodation was reasonably and bonafide required by the plaintiffs - landlords. Another ground was that the defendant No.1 - tenant had acquired suitable vacant accommodation for his residence. The third ground was that the defendant No.1 - tenant had not used the suit premises for more than six months immediately preceeding the date of filing of the Suit. The next ground was that the defendants were guilty of conduct which amounts to nuisance and annoyance to the present plaintiffs. The last ground was that the defendant No.1 was in arrears of rent for more than six months and he failed to pay the same within a month of service of notice of demand. Rs.540/- were claimed as arrears of rent. It was alleged that the plaintiffs No.1 to 5 reside at Calcutta, but they wanted to come to reside at Surat where the disputed property is situated. The plaintiff No.2 Nagindas wanted to settle at Surat. Plaintiff No.1 did not keep good health at Calcutta so he also wanted to come to Surat to enjoy retired life at Surat. In this way it was alleged that the landlords required the Suit premises reasonably and bonafide for their personal use. Arrears of rent from 1.5.1958 was alleged to be due. Despite service of notice of demand the arrears of rent amounting to Rs.3579/- were not paid by the defendant No.1. Electricity charges were also not paid since 1969. It was alleged that the defendant Nos. 1 & 2 did not reside in the suit premises and it was not used by the defendant No.1 for residence. The defendant No.3 only used the suit premises for sleeping purpose in the night. He used to bring strangers in the suit premises who used to give threats to the plaintiff No.5. This conduct of the defendant No.3, according to the plaintiff, caused nuisance and annoyance to the plaintiffs and adjoining occupiers.

3. The Suit was resisted by the defendants No.1 & 3 through seperate written statement and by defendants No.2 & 4 through another written statement. They denied all these allegations and raised several pleas regarding

validity of notice, and ownership of the plaintiffs. They also pleaded that the defendants No.2,3 & 4 became co-owners of the property hence the Suit for eviction against co-owners was not maintainable. The extent of tenanted accommodation was also challenged. They pleaded that they are the tenants of the ground floor as well as the first floor. Arrears of rent were also denied by the defendants, so also the electricity charges. According to the defendants the whole suit property on the ground floor and the first floor was let out at Rs.15/- p.m.. but since the defendant No.1 handed over possession of the first floor to the plaintiff No.5 in the year 1969 the rent of the ground floor should be Rs.7.50 ps. p.m. It was denied that the defendant No.1 acquired alternative vacant accommodation. It was also denied that the defendant No.1 did not use the suit accommodation for a period of six months immediately before filing of the Suit. Allegation of nuisance was also denied.

4. The trial Court framed 16 issues in the case. Those issues were answered partly in favour of the landlords and partly in favour of the defendants. The trial Court found that the Suit for possession was not liable to be decreed. Standard rent was fixed by the trial Court at Rs.15/- p.m. Arrears of rent within limitation were decreed by the trial Court.

5. An Appeal was preferred by the landlord - plaintiffs. In Appeal only eight points were considered by the Appellate Court because other points were not pressed. After considering those points and recording findings thereon the Appellate Court was of the view that the Appeal was liable to be dismissed. It was accordingly dismissed, hence this revision.

6. Learned Counsel for the parties were heard at length. As indicated above only eight points were considered by the lower Appellate Court. Learned Counsel for the respondent Ms. Kalpana J. Brahmbhatt contended that this is a case of concurrent findings of fact hence interference in revision is not required. According to her since two courts below have recorded concurrent findings of fact on all the disputed issues and those findings are neither illegal nor perverse the revision is liable to be dismissed. Shri Anjaria, learned Counsel on behalf of the revisionist contended that the findings of the two courts below, especially on the grounds contained in Section 13(1)(l) are contrary to law hence interference in revision is necessary.

7. On point No.2 the Lower Appellate Court as well as the trial Court recorded concurrent findings that the landlords have failed to establish that the tenants have not used the suit premises for a continuous period of six months before institution of the Suit. I have examined this finding recorded by the two courts below. It is finding on pure question of fact and there has been no error in appreciation of evidence by the lower Appellate Court as well as by the trial Court. Consequently no interference on this finding is called for in this Revision.

8. Likewise findings of two courts below regarding nuisance and misconduct of the tenants causing annoyance to the landlord and adjoining neighbours and occupiers also do not suffer from any error of law or misappreciation of evidence on record. It is concurrent findings of fact recorded by the two courts below. Hence on this point also no interference is required in the instant revision. Thus, on these two grounds no decree for eviction could be passed.

9. The next ground is regarding default of the defendant No.1 in payment of rent exceeding six months after receipt of notice of demand. The two courts below found that no doubt the defendant No.1 was in arrears of rent for more than six months, but he did not refuse or neglect to make payment thereof within a period of one month from the date of service of noticfe. This finding has also been examined and I do not find any error in the finding on this point recorded by the two courts below. Consequently on this ground also the decree for eviction could not be passed. The trial Court as well as the Appellate Court found that the defendant No.1 was ready and willing to pay the arrears of rent. Consequently the decree for eviction was rightly refused by the two courts below on this ground.

10. The two Courts below have again rightly concluded from the evidence on record that the plaintiffs appellants did not require the suit premises reasonably and bonafide for their personal use and occupation. Shri Anjaria could not convince me that the findings of the two courts below on this issue are erroneous or suffer from manifest error of appreciation of evidence or manifest error of law. If the premises was not required reasonably and bonafide by the plaintiffs landlords the question of comparative hardship was rightly not considered by the Appellate Court.

11. The only point which requires consideration in

this revision is whether the appellants established that the respondents tenant, after coming into operation of the Bombay Rent Act, have built or acquired vacant possession of a suitable residence. On this point Shri Anjaria vehementally argued that the findings to the contrary recorded by the two courts below are erroneous. This takes me to examination of findings of the lower Appellate Court on point No.1. The findings of the lower Appellate Court confirms the finding of the trial Court on this point. It is in evidence and is also established from the Rent Note that the defendant No.1 was the tenant of the disputed accommodation. The defendants No.2 & 3 purchased a property in Bordi Sheri, Surat on 18.5.1966. No doubt they were residing with the defendant No.1, but the question is whether this acquisiton will cover the case under Section 13(1)(l) of the Bombay Rent Act. There was an attempt to argue in the lower Appellate Court that the property was actually purchased by the defendant No.1 Benami in the name of the defendants No.2 & 3. However, the lower Appellate Court rightly repelled this challenge and observed that it could not be established that the acquisition of house on 18.5.1966 in the name of defendants No.2 & 3 was Benami. The Lower Appellate Court rightly proceeded to examine the evidence and observed that if a person challenges certain transaction to be Benami the onus lies upon the person challenging the transaction as Benami. The evidence was examined on this line and the lower Appellate Court rightly concluded that there was no cogent evidence to conlude that the acquisition by the defendants No.2 & 3 on 18.5.1966 was Benami.

12. It is further clear from the evidence on record that the defendant No.2 released his share in the property acquired on 18.5.1966 by accepting Rs.5000/- in the year 1970, and since 1970 the defendant No.3 alone became the owner of the property acquired on 18.5.1966. It may be mentioned that the defendant No.4 did not acquire the property in Bordi Sheri along with defendants No.2 & 3. Consequently since 1970 the defendant No.3 alone became owner of the property acquired in Bordi Sheri, Surat. The instant Suit was filed in the year 1977 which was numbered as Suit No.776/77. Since 1970 to 1977 no action was taken by the landlord for recovery of possession of the accommodation on the ground that the defenant No.3 was living as family member of the tenant defendant No.1 and since he acquired suitable residence the tenant was also liable to be evicted. It is note worthy to mention that the tenant - defendant No.1 expired during pendency of the Suit on 9.11.19080.

13. Before appreciating the argument of Shri Anjaria, learned Counsel for the revisionist it would be desirable to mention the provisions of Section 13(1)(l) of the Bombay Rent Act. It provides that "notwithstanding anything contained in this Act a landlord shall be entitled to recover possession of any premises if the Court is satisfied only that the tenant after coming into operation of this Act has built, acquired vacant possession of or been allotted a suitable residence". The provisions of this sub.section can be attracted only when the following conditions are established :

i) that the tenant, after coming into operation of this Act has built, suitable residence for himself,

ii) that the tenant after coming into operation of this Act has acquired vacant possession of a suitable residence;

iii) that the tenant, after coming into operation of this Act, has been allotted suitable residence.

Out of these three conditions it is no case of the parties that the defendant No.1 or any of the defendants were allotted any suitable residence. It is also not the case of the parties that the defenadnts have built any suitable accommodation for their residence. All that is said is that the defendants have acquired suitable residence for their purpose. It has already been discussed earlier that the defendant No.1 was the tenant and he did not acquire any accommodation, what to say of a suitable accommodation or residence for himself or for his family members. The acquisition of property in Bordi Sheri, Surat was made by the defendants No.2 & 3 on 18.5.1966. At that time the defendants No.2 & 3 were not the tenants or the sub-tenants of the defendant No.1. They were living with defendant No.1. It was only during pendency of the Suit when defendant No.1 tenant expired on 9.11.1980 that the defendants No.2 & 3 became statutory tenants. On this point no controversy was raised by Ms. K.J.Brahmbhatt. As such the defendants No.2 to 4 became statutory tenants u/s. 5(11)c) of the Bombay Rent Act, with effect from 9.11.1980. Under Section 5(11)(c) of the Act the tenant has been defined to mean any person in relation to premises let for residence, any member of the tenant's family residing with the tenant at the time of or within three months immediately preceeding the death of the tenant as may be decided in default of agreement by the Court. Thus, under this provision the defendants No.2 to 4 who were

residing with the tenant defendant No.1 as member of tenant's family will be deemed to be statutory tenants upon the death of the tenant. In this way the status of statutory tenant was conferred on the defendants No.2 to 4 only on or after 9.11.1980, whereas the Suit was filed in the year 1977. Alternative property was acquired by the defendants No.2 & 3 on 18.5.1966. In this view of the matter the statutory tenants did not acquire any proerty suitable for their residence after they became statutory tenants on or after 9.11.1980. If they acquired some accommodation prior to that, namely on 18.5.1966, they did not acquire the same in the capacity of tenant or in the capacity of statutory tenant. Consequently, the acquisition of property by the defenants No.2 & 3 in the year 1966 cannot be a ground for their eviction after death of the tenant - defendant No.1.

14. Shri Anjaria raised two contentions. His first contention has been that admittedly the proerty acquired on 18.5.1966 was after the enforcement of the Bombay Rent Act hence the case is covered by Section 13(1)(l) of the Act. I am unable to accept this contention for the obvious reason that Section 13(1)(l) proceeds with the word that the tenant after coming into operation of this Act has built, acquired vacant possession of or been allotted suitable residence. Thus, emphasis is that the acquisition of vacant accommodation suitable for residence should have been made by the tenant and not by his family member. Shri Anjaria has, however, cited two cases that even if the family member of the tenant acquired suitable accommodation the case is covered by Section 13(1)(l) of the Act. In Hasmukhlal Raichand Shah v/s. Arvindbhai Mohanlal Kapadia, areported in 1988 (1) GLH 122, the facts were that the wife of the tenant constructed bungalow. The husband and wife were staying together. The husband was having domain over wife's proerty. It was held that the tenant husband can be said to have acquired suitable residential accommodation. This case is apparently distinguisable because there is no evidence before me that the defendant No.1 had domain over the additional property acquired by the defendants Nos.2 & 3. It was further held in this case that the question whether the provisions of Section 13(1)(l) would be attracted or not where wife or the son of the tenant acquires or builds suitable residential accommodation would depend upon the facts of each case. Thus, no general proposition of law was laid down in this case and it was left open for determination according to the facts of particular case whether the provision of Section 13(1)(l) could be attracted in cases where wife or son of

the tenant acquires suitable accommodation. It was illustrated in this case that if there is evidence that the tenant and his family members are living together, one of them has acquired suitable residential accommodation and if there is no evidence to the effect that they had not been looking upon themselves as one unit or when the members of the family live together, mess together, then acquisition of suitable residential accommodation by one of them would be considered to be the acquisition of suitable residential accommodation by the tenant. To my mind even this illustration cannot be applied because there is no evidence of joint mess and joint living. Living in a seperate portion of the tenanted accommodation would not amount to joint living. There is also nothing on record to show that all the defendants were living as one unit when the property was purchased in 1966 by the defendants No.2 & 3.

15. Similarly in the case of Shantaben Naranbhai Dalwadi v/s. Vadilal Kacharabhai Prajapati, reported in 2000 (1) GLH 362, it was laid down that acquisition of suitable accommodation by one of the family members when such members live together would be sufficient to bring the landlord's case under the provisions of Section 13(1)(l) of the Act. It was also observed that the interpretation cannot be restricted to mean that the tenant himself must have acquired suitable accommodation.

16. Even in face of these decisions it cannot be said that the family member of the defendant No.1 acquired vacant possession of suitable residence. Acquisition of vacant possession is sine qua non for applicability of Section 13(1)(l) and the second essential condition is that such acquisition of vacant possession of the accommodation should be for residential purpose and should be suitable for the residential purpose of the tenant and his family members. On this point, there is no evidence that in the year 1966 i.e. on 18.5.1966 the defendants No.2 & 3 purchased the property and obtained vacant possession. Oral evidence on the other hand is that at that time the property was under the tenancy of various tenants. Ex.71 is the receipt dated 7.9.1971 in relation to old tenants. Consequently it cannot be said that from 1966 to 1971 the defendants No.2 or 3 acquired vacant possession of the property purchased on 18.5.1966. There is also a rent note Ex.70 indicating that the additional construction made in the acquired property was let out. It is dated 1.3.1974. The evidence is that some additional construction was made in the property and then it was let out through rent note Ex.70 on 1.3.1974. The tenant - defendant No.1 expired on 9.11.1980. Even

if it is believed that additional construction was made and let out on 1.3.1974 it cannot be said that this was done by the tenant - defendant No.1. The Suit itself was filed in the year 1977 and the tenant defendant No.1 expired on 9.11.1980. There is also evidence that possession of some portion from the old tenants in the acquired property was obtained by the defendant No.2. As mentioned earlier the defendant No.2 relinquished and released his rights in the property in the year 1970 and thereafter the defendant No.3 alone became the sole owner of the property. It is also in evidence that the defendant No.2 is not handing over possession of the property in his possession to the defendant No.3. Other portion was already let out and it has not been vacated by the tenants. Consequently it cannot be said that the family members of the tenant, namely, defendants No.2 to 4 obtained vacant possession of a suitable residence. In this view of the matter the provisions of Section 13(1)(l) are hardly attracted.

17. Shri Anjaria raised the next argument in the nature of second point that the provisions of Section 13(1)(l) of the Act have to be read retrospectively and once the defendants No.2 to 4 acquired the status of statutory tenants it will be deemed that they became statutory tenants after enforcement of the Bombay Rent Act. I am unable to accept this argument for the simple reason that the defendants No.2 to 4 became statutory tenants u/s. 5(11)(c) of the Bombay Rent Act, only on or after 9.11.1980 when the tenant defendant No.1 expired. This status of statutory tenant of the defendants No.2 to 4 cannot be stretched retrospectively to the year 1947 when the Bombay Rent Act came into force. Thus when the status of a statutory tenant was conferred on the defendants No.2 to 4 on 9.11.1980 that the matter has to be examined whether they or any of them acquired alternative suitable accommodation for their residence. Obviously answer to this question is in negative inasmuch as the defendants No.2 & 3 acquired alternative accommodation, not in vacant state, on 18.5.1966 when they were not statutory tenants. If they were family members residing with the tenant - defendant No.1 it cannot be held for want of proper evidence that the defendant No.1 had control or domain over the property acquired by the defendants No.2 & 3. It has been rightly held by the lower Appellate Court that the property was not acquired Benami by the defendant No.1 in the name of the defendants No.2 & 3. Joint mess is also not proved between the defendant No.1 and the remaining defendants. It is also not proved that the defendants were living as one unit. As such retrospective operation suggested by

the learned Counsel for the revisionist cannot be accepted.

18. For the reasons given above I am of the view that the two courts below have committed no error of law in holding that the landlords were not entitled to a decree for eviction on the ground that the tenants had acquired alternative suitable accommodation for their residence after coming into operation of the Bombay Rent Act.

19. No other point was pressed before me. The decree for arrears of rent which was within limitation was rightly passed by the trial Court and was rightly confirmed by the lower Appellate Court. Fixation of standard rent at Rs.15/- p.m. does not suffer from any error of law because it could not be established that the ground floor as well as the first floor was let out to the defendant No.1. If it was so then the question of handing over possession of the first floor to the plaintiff No.5 in 1969 did not arise. The standard rent fixed by the trial Court, as confirmed by the lower Appellate Court, also requires no interference.

20. In the result I do not fined any merit in this revision which is hereby dismissed with no order as to costs.

sd/-

Date : May 09, 2000 (D. C. Srivastava, J.)

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